

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

Directions: Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

Appeal No. & Caption	23-1850 Honeywell Int'l Inc., et al v OPTO Electronics, Inc., Ltd.
Originating No. & Caption	3:21-cv-00506 Honeywell Int'l Inc, et al v OPTO Electronics, Inc
Originating Court/Agency	U.S.D.C. for the Western District of North Carolina

Jurisdiction (answer any that apply)		
Statute establishing jurisdiction in Court of Appeals	28 U.S.C. § 1291	
Time allowed for filing in Court of Appeals	30 Days	
Date of entry of order or judgment appealed	07/23/2023	
Date notice of appeal or petition for review filed	8/14/2023	
If cross appeal, date first appeal filed	-	
Date of filing any post-judgment motion	8/3/2023 & 8/17/2023	
Date order entered disposing of any post-judgment motion	Pending	
Date of filing any motion to extend appeal period	-	
Time for filing appeal extended to	-	
Is appeal from final judgment or order?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
If appeal is not from final judgment, why is order appealable? -		

Settlement (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.)		
Is settlement being discussed?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

Transcript (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Has transcript been filed in district court?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Is transcript order attached?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

Case Handling Requirements (answer any that apply)		
Case number of any prior appeal in same case	-	
Case number of any pending appeal in same case	-	
Identification of any case pending in this Court or Supreme Court raising similar issue	-	
	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does case involve question of first impression?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

Nature of Case (Nature of case and disposition below. Attach additional page if necessary.)
<p>Honeywell International Inc., Hand Held Products, Inc., and Metrologic Instruments, Inc. (collectively, "Honeywell") filed a breach of contract action against OPTO Electronics Co., Ltd. ("OPTO") based on OPTO's breach of the parties' earlier License and Settlement Agreement ("the Agreement"). Honeywell claimed that OPTO, inter alia, (1) breached its representation and warranty in Section 5.1 of the Agreement regarding its past sales and (2) breached its Section 4.3 obligation to pay ongoing royalties to Honeywell.</p> <p>The Court granted summary judgment in OPTO's favor regarding Honeywell's allegation of breach of Section 5.1. The parties tried Honeywell's claim under Section 4.3, et al., to a jury. The jury returned a verdict in Honeywell's favor, finding that all disputed products were, in fact, "2D Barcode Products" pursuant to the Agreement. The district court entered judgment based on the jury's verdict. Honeywell timely filed this appeal.</p>

Issues (Non-binding statement of issues on appeal. Attach additional page if necessary)

1. In granting summary judgment in favor of OPTO, did the district court err in concluding that the optional audit procedure set forth in Section 5.1 of the parties' Agreement served as an exclusive remedy for any recovery based on a breach of Section 5.1?

2. Did the district court err in sua sponte granting summary judgment, finding that there were no genuine disputes of material fact as to whether Honeywell had, in fact, complied with Section 5.1 of the Agreement?

3. Did the district court err in concluding that Honeywell's Complaint limited the available damages theories related to Honeywell's claim that OPTO breached Section 5.1 of the Agreement?

Adverse Parties (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

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Counsel for: Appellants

Certificate of Service (required for parties served outside CM/ECF): I certify that this document was served on _____ by ☐ personal delivery; ☐ mail; ☐ third-party commercial carrier; or ☒ email (with written consent) on the following persons at the addresses or email addresses shown:

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